was not in so he helped himself by pouring the drugs into a plastic tube when the police arrived. The learned President convicted him of the offence of drug trafficking. He appealed.

Held, dismissing the appeal: there was ample evidence to support the finding of the learned President. If the purpose of the appellant in visiting the room was merely to help himself to drugs all he had to do was to pick up a few of the 72 filled plastic tubes. There was no necessity to fill a new plastic tube.

CRIMINAL APPEAL.

Jagjit Singh for the appellant.

Zaleha Zahari (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Harun J.: This is an appeal from the decision of the President of the Sessions Court, Kuala Lumpur in convicting the appellant under section 39B(1)(c) of the Dangerous Drugs Ordinance, 1952 and sentencing him to life imprisonment.

The prosecution's case is that on May 26, 1976 the police raided premises No. 12-A Jalan Sarawak, off Jalan Pudu, Kuala Lumpur at about 12.47 p.m. In one of the rooms they saw the appellant filling drugs into a plastic tube. On seeing the police the appellant made an attempt to escape by jumping from the first floor. In the room the police recovered:

(i) 18 plastic packets and 72 plastic tubes containing a light brown powder which on analysis was found to contain 55.37 grammes of heroin and 8.58 grammes of morphine.

(ii) 249 empty plastic tubes.

Some of these exhibits were found on a bed, some on the floor and the rest on the dressing-table in the room. The appellant was seen sitting on the bed when filling the plastic tube. According to the landlady the room was rented by one Ah Kee and she had seen the appellant visit Ah Kee two or three times previously.

In his defence the appellant said that he was a drug addict and went to see Ah Kee that day to buy drugs. Ah Kee was not in and so he helped himself by pouring the drugs into a plastic tube when the police arrived and he tried to run away from them. According to him he had known Ah Kee for two weeks. During this time he had purchased drugs from Ah Kee. He had been taking drugs for one year and spent about $30 to $40 per day on drugs. At the time of his arrest he was helping his father who is a pork-seller. He does not say how much he is paid by his father but when he was a lift-fitter in Singapore he earned $5 per day. He denies packing the drugs for sale.

On these facts the learned President found the appellant guilty of the charge. In arriving at this decision however the learned President found that the appellant was "not a drug addict but one who was preparing the way for drug trafficking as stated in the charge." He based his conclusion on the first finding from his observation of the appellant in court. I do not have that advantage but from a perusal of the record there was no justification for this finding. Be that as it may, there was ample evidence to support the second finding of the learned President. If the purpose of the appellant in visiting the room was merely to help himself to drugs all he had to do was to pick up a few of the 72 filled plastic tubes. There was no necessity to fill a new plastic tube. It is common knowledge that dangerous drugs like heroin and morphine in powder form are sold retail to drug addicts in plastic tubes like the ones recovered by the police here and a court may now presume the existence of this fact under section 114 of the Evidence Act, 1950. There can be little doubt that Ah Kee's room was used for the preparation of drugs for sale.

On the facts of the case it was irrelevant to the defence whether the appellant was a drug addict or not. On the contrary the fact that he claims he is a drug addict does not assist the defence but strengthens the prosecution's case that he was packing the drugs for sale. He had no visible means of income but was spending $30 to $40 per day on drugs. It is reasonable to infer that to satisfy his craving for drugs he had to earn it by assisting in its distribution.

I see no cause for disturbing the learned President's finding of guilt and hold that the appellant was rightly convicted of the charge.

Once convicted there was little else the court could do but pass the mandatory sentence of life imprisonment.

I accordingly dismissed the appeal and confirmed the conviction and sentence.

Appeal dismissed.

Solicitors: *Jagjit Singh.*

CHUNG KHIAW BANK LTD. v. MULTIDEV SDN. BHD. & ORS.

[O.C.J. (Gunn Chit Tuan J.) November 24, 1977 and January 19, 1978]

[Kuantan — Civil Suit No. 15 of 1977]

Practice and Procedure — Application to strike out defence and counterclaim — Triable issues — R.S.C. 1957, O. 25 r. 4, scope of — R.S.C. 1957, O. 28 rr. 4 & 12, O. 23 r. 6, O. 70.

The plaintiffs applied for an order to strike out the defence and counterclaim of the first, second and third defendants and asked that judgment be given in favour of the plaintiffs. The latter alleged that the first defendants were indebted to them in the sum of $266,425.54 being the amount due by the first defendants on a term loan granted by the plaintiffs to the first defendants. As a security for the said loan the first defendants by a debenture dated January 16, 1976 charged their roof tile machinery in favour of the plaintiffs. The second and third defendants were the guarantors of the first defendants by a guarantee dated January 28, 1975.

The first defendants averred and contended that the plaintiffs had agreed to open a letter of credit for the sum of M$146,637.15 for the purchase of the machinery by the first defendants. The latter claimed that the plaintiffs had agreed to increase the amount to $387,328.30. On arrival of the said machinery, the plaintiffs refused to deliver up the bills of lading, invoice and certificate of origin, thus preventing the first defendants from taking delivery. The plaintiffs having taken delivery of the machinery on August 12, 1974 sought to impose new conditions for the release of the machinery. The first defendants signed the debenture dated January 6, 1975 containing the new conditions to secure the release of

the machinery. The defendants counterclaimed that the plaintiffs in breach of the debenture dated January 6, 1975, continued to retain possession of the machinery, thereby causing loss to the defendants. The latter counterclaimed for damages. They also averred that no payment of any instalment under the said debenture was due until the machinery had been released to the defendants.

Held, dismissing the plaintiffs' application: (1) there were triable issues of both fact and law. It was not for the court at the stage to try on a motion or summons, whether the statement of defence and counterclaim were true or false, and the plaintiffs could only succeed if they could show that the defence and counterclaim were clearly sham;

(2) the court's inherent jurisdiction to dismiss an action which was an abuse of the process of the court ought to be sparingly exercised, and only in exceptional cases.

Cases referred to:-

(1) *Republic of Peru* v. *Peruvian Guano Co.* (1887) 36 Ch. D. 489.

(2) *Attorney-General of the Duchy of Lancaster* v. *London and North Western Railway Co.* [1892] 3 Ch. 274, 278.

(3) *Re The Firm of T.S.N.* [1935] M.L.J. 139.

(4) *Remmington* v. *Scoles* [1897] 2 Ch. 1.

(5) *Reichel* v. *Magrath* (1889) 14 A.C. 665.

(6) *Lawrance* v. *Norreys* (1890) 15 App. Cas. 210, 219.

(7) *Hyams* v. *Stuart King* [1968] 2 K.B. 696, 724.

CIVIL SUIT.

Lim Peng Siew for the plaintiff.

Lim Ewe Hock for the defendants.

Cur. Adv. Vult.

Gunn Chit Tuan J.: This was an application by way of summons-in-chambers by the plaintiffs for an order that "the defence and counter-claim of the 1st defendant, 2nd defendant and 3rd defendant be struck out and judgment be given accordingly in favour of the plaintiffs".

It was pointed out by Mr. Lim Ewe Hock, counsel for the defendants, that the plaintiffs had not indicated in the said summons-in-chambers under what Order of the Rules of the Supreme Court, 1957, they were making their application. He referred to the case of *Republic of Peru* v. *Peruvian Guano Co.*[1] where it was held that applications under Order 25 rule 4 must be tried upon the allegations contained in the pleading, and evidence in support of the application is not admissible. He therefore contended that if the plaintiffs' application was under Order 25 rule 4 then the court should decide the application on the pleadings only. He also referred to the following dictum of Lord Justice Smith in the case of *Attorney-General of the Duchy of Lancaster* v. *London and North Western Railway Co.*[2] where His Lordship said: —

"I only want to make one remark about Order XXV, rule 4. It seems to me that when there is an application made to strike out a pleading, and you have to go to extrinsic evidence to shew that the pleading is bad, that rule does not apply. It is only when upon the fact of it it is shewn that the pleading discloses no cause of action or defence, or that it is frivolous and vexatious, that the rule applies."

Counsel for the defendants then very fairly and correctly pointed out that if the application of the plaintiffs was for the court to exercise its inherent jurisdiction, then it could look at the affidavits filed.

Mr. Lim Peng Siew, counsel for the plaintiffs, stated that the application was under Order 25 rule 4 and Order 32 rule 6 of the Rules of the Supreme Court, 1957, as well as under the inherent jurisdiction of the court. In any case reliance was also placed by him on Order 28 rule 12 and the newly amended Order 70 of the Rules of the Supreme Court, 1957.

Be that as it may, in the first instance I considered this to be an application under Order 25 rule 4 and proceeded to examine the pleading filed by the parties.

The writ is a specially indorsed writ and in the statement of claim, the plaintiffs alleged that the first defendants were indebted to them in the sum of $266,425.54 being the amount due by the first defendants on a term loan granted by them to the first defendants. As security for the said loan the first defendants by a debenture dated 16th day of January, 1975 charged their roof tile machinery in favour of the plaintiffs. The second and third defendants are the guarantors of the first defendants to the extent of $212,000 as evidenced by a guarantee dated 28th day of January, 1975, executed by the second and third defendants in favour of the plaintiffs.

Under clause 8 of the said debentures at any time after the plaintiffs shall have demanded payment of any money secured the plaintiffs may by writing under the hand of any director, chief general manager, joint general manager or assistant general manager for the time being of the plaintiffs or any person authorised by any one of them in writing appoint any person or persons to be a receiver or receivers of the property charged or any part thereof and remove any receiver or receivers so appointed and appoint another or others in his or their place.

The plaintiffs went on to allege that the first defendants have not paid any instalments of the term loan and have been in default since March 1, 1975 which was agreed under clause 1 of the said debenture to have been the date of repayment of the first instalment of the said loan. As a result of the aforesaid default on the part of the first defendants, the plaintiffs through their solicitors Messrs. Lim Huck Aik & Co. caused a notice of demand dated 24th day of September, 1975, to be issued to the first defendants demanding payment of arrears amounting to $224,719.98 plus the sum of $9,345.90 being further interest due within seven days, failing which the plaintiffs would forthwith proceed to exercise their rights under the said debenture by appointing a receiver or receivers to realise the security in favour of the plaintiffs. As the first defendants have failed or neglected to comply with the said demand the plaintiffs on March 12, 1976 exercised their powers under the said debenture and appointed Mr. Ong Eng Kooi and Mr. Abu Hassan bin Kendut as receivers. The plaintiffs have been unable to obtain satisfaction of the amount claimed under the said debenture as the said receivers have not been able to sell the said roof tile machinery charged to them by the first defendants.

The plaintiffs also alleged that notwithstanding a notice of action demanding payment given to the first, second and third defendants on the 13th day of

December, 1976, by their solicitors, all the defendants have so far failed and/or refused to settle the sum owing. They therefore prayed for an order for: —

"(a) the sum of $266,425.54 plus interest to accrue thereon at the rate of 12% per annum from the 1st day of December, 1976 against the first defendants until date of judgment and thereafter at the rate of 6% per annum until date of payment.

(b) the sum of $212,000 plus interest to accrue thereon at the rate of 12% per annum from the 13th day of December, 1976 against the second and third defendants until date of judgment and thereafter at the rate of 6% per annum until date of payment;

(c) costs;

(d) such further or other Order as this Honourable Court may deem fit to make."

The statement of defence, apart from admitting that the second and third defendants were guarantors of the first defendants which had executed the said debenture, denied the other allegations of the plaintiffs. The defendants then averred as follows: —

"(Paragraph 3 of Statement of Defence) —

(a) The first defendants are a limited company incorporated in Malaysia and having its registered office at No. 12 Argyll Road, Penang.

(b) On the 23rd March 1973 the first defendants, applied in writing to the plaintiffs to open letters of credit for the purchase by the first defendants of the following machinery:

1 pc. fully automatic roof tile machine Skandia 40;

1 pc. centrigraph blower;

12,000 pcs. pressed steel pallets;

3 pcs. conveyor;

1 pc. fender.

(c) After written and oral negotiations between the plaintiffs and the first defendants the plaintiffs offered to open letters of credit amounting to M$146,637.15 for the aforesaid purpose under the following terms and conditions.

(1) the letter of credit to be payable at sight.

(2) the first defendants to repay the plaintiffs in six monthly instalments and to pay interest at 10.89% per annum.

(3) the letter of credit to be opened by the plaintiffs against the guarantee of the Directors of the first defendants.

(d) The first defendants accepted the aforesaid offer and on the 3rd May 1973 the first plaintiff opened letter of credit No. SKP 73/01 in the sum of M$146,637.15.

(e) The aforesaid offer and acceptance is contained *inter alia* in the following documents, i.e. a letter dated 23rd March 1973 from the first defendants to the plaintiffs; a letter dated 27.3.1973 from the plaintiffs to the first defendants; a letter dated 4th April 1973 from the first defendant to the plaintiffs and a note in writing dated 27th April 1973 by the credit Manager Mr. J.C. Lee on the plaintiff's letter dated 27th March 1973.

(f) On the 20th October 1973 the first defendants applied to the plaintiffs in writing to extend the valid date of the Letter of Credit to 15th March 1974 and to increase the amount from $266,613 to $387,328.30 SW.Kr. and also to include the following items in Letter of Credit.

4 Ballat removal machine.

5 Conveyor for depalleted tiles.

6 Conveyor for pallets, placed under 5.

9 Electrica central switch-stand.

10 Control console (price for item 9 and 10) Ridge tile machine.

400 pallets for same.

Spare parts.

3,000 extra pallets at 11.00/pc.

Tool for stamping the brand "Multi Tile" Stamping 15,000 x 0.65.

(g) On the 24th October 1973 the plaintiffs agreed in writing to the aforesaid amendments to the said Letter of Credit. All other terms and conditions of the said Letter of Credit remain unchanged.

(h) On the 26th April 1974 the first defendants received notice of arrival of the said machinery by the m.s. "Ceylon" due in Penang on 3.5.1974.

(i) On the 7th May 1974 the first defendants wrote to the plaintiffs enclosing the aforesaid notice of arrival and requested the plaintiffs to arrange for the loan documents for the first defendants' signature and requested the following documents from the plaintiffs.

2 Bills of Lading

1 Invoice

1 Certificate of Origin.

(j) In spite of repeated oral demands by the first defendants the plaintiffs refused to comply with the requests in paragraph (i) above.

(k) The said machinery and goods arrived in Penang on 3rd May 1974 and were discharged into the Penang Port Commission Godown in Butterworth.

(l) The plaintiffs refused to deliver up the 2 Bills of Lading, invoice and certificate of origin on the ground that it was a condition for the opening of the said Letter of Credit that the first defendants must execute a Debenture in favour of the plaintiffs in respect of the machinery covered by the Letter of Credit. The first, second and third defendants categorically deny that there was any such condition and aver that the plaintiffs in breach of the agreement referred to in paragraph 3(c)(d)(e) hereof refused to hand over the aforesaid documents for the first defendants to take delivery of the machinery and goods and unilaterally sought to impose a fresh condition on the first defendants.

(m) In July and early August the Penang Port Commission threatened to auction the said machinery and goods lying in their godown unless the first defendants took delivery immediately. As the plaintiffs refused to surrender the bills of lading, invoice and certificate of origin, the first defendants could not take delivery and to prevent the Penang Port Commission from auctioning the said goods. the first defendants requested the plaintiffs to take delivery of the machinery on their behalf.

(n) The first defendants had ordered the machinery and goods for sale to a company, Multititle Sdn. Bhd., and in consequence of the refusal of the plaintiffs to hand over the Bills of Lading, invoice, and certificate of origin, in breach of the agreement referred to in paragraph 3(c)(d)(e) above, and the inability of the first defendants to deliver the said machinery and goods, Multititle Sdn. Bhd. cancelled the contract with the first defendants, and the first defendants have suffered loss and damage.

(o) After the plaintiffs had taken delivery of the machinery and goods on or about the 12th August 1974, the plaintiffs, in spite of repeated demands by the first defendants still refused to release the said machinery and goods to the first defendants.

(p) The plaintiffs sought unilaterally to vary and impose fresh conditions for the release of the said machinery and goods, namely

(1) all the directors of the first defendants to give a joint and several guarantee.

(2) a bill of sale to be executed to cover the tile making machinery.

(3) since the letter of credit was for $212,000 the maximum loan will have to be this amount and the excess must be liquidated.

(4) the fixed loan is to be for a period of six months at 12% per annum on annual rest.

(q) On the 2nd August 1974 and again on 8th October 1974 the plaintiffs sought to vary the agreement referred to in paragraph 3(c)(d)(e) above and to impose the fresh condition for the release of the machinery and goods in their possession namely,

(1) the first defendants to sign a Debenture in favour of the plaintiffs in respect of the machinery and goods and the terms of the debenture to be in the discretion of the plaintiffs.

(r) To obtain the release of the said machinery and goods the first defendants were forced to sign the debenture on the 6th day of January 1975. The first, second and third defendants and each of them will refer to the said debenture for its express terms and conditions.

(s) The first, second and third defendants and each of them will contend that it is express in the said debenture that at the date of the execution thereof the said machinery and goods were to be in the possession of the first defendants. Alternatively, the first, second and third defendants and each of them avers that the plaintiffs agreed that on the signing of the said debenture on the 6th January 1975, they would release the said machinery and goods to the first defendants.

(t) The first, second and third defendants and each of them avers that the plaintiffs, in breach of the said debenture and/or in breach of the oral agreement collateral to the said debenture failed and/or refused to release the said machinery and goods to the first defendants.

(u) the first, second and third defendants and each of them avers that the first instalment of $37,453.33 was to be paid on the 1st day of March 1975 only if release of the said machinery and goods was made on the 16th January 1975.

(v) The first, second and third defendants and each of them avers that it was only on 4th April 1975 that the plaintiffs wrote to the first defendants informing them that all legal formalities in respect of the debenture had been duly completed and requesting the first defendants to pay to the plaintiffs the difference due and take delivery of the machinery as soon as possible.

(w) The first, second and third defendants aver that the "difference" referred to above is the 1st instalment due on the 1st day of March 1975 and the 1st day of April 1975. The defendants and each of them avers that the demand for the instalments for the 1st March 1975 and 1st April 1975 is in breach of the debenture or the oral agreement collateral thereto for reason that the said machinery and goods were not released to the first defendants.

(x) The first, second and third defendants and each of them avers that the plaintiffs had no right to retain possession of the machinery and goods under the terms of the debenture and that it is implicit in the debenture that it is a debenture and not a pledge and that first defendants shall enjoy the possession, use, benefit and profits of the said machinery and goods. The first, second and third defendants and each of them aver that they have been deprived of the possession and use of the said machinery and goods and have thereby suffered loss and damage.

(y) The first, second and third defendants and each of them avers that no payment of any instalment under the debenture is due until the said machinery and goods have been released to the first defendants. They deny therefore each and every allegation contained in paragraph 6 and 7 of the Statement of Claim.

(z) The first, second and third defendants and each of them avers that the plaintiffs were not entitled under Clause 8 of the Agreement to appoint a receiver for reason stated in paragraph 3(y) above.

(a) (i) If the plaintiffs were entitled under the circumstances of the case to invoke Clause 8 of the debenture, the first, second and third defendants and each of them contends that the plaintiffs are not entitled to claim $266,425.54 plus interest thereon against the first defendants or the sum of $212,000 plus interest thereon against the second and third defendants as prayed for, for reason that the Receiver has not brought in the Accounts of that Receivership."

In counterclaiming, the defendants then repeated their above averment in paragraph 3 of their statement of defence. In short they alleged that the plaintiffs had not only committed a breach of the agreement referred to in paragraphs 3(c), (d) & (e) of the statement of defence but had also committed a breach of the terms of the said debenture by retaining possession of the machinery and goods in question, thereby causing loss to the defendants. It was also alleged that the plaintiffs had no lien on the documents of title of the said machinery and goods. The defendants then counterclaimed for: —

"(1) Damages for breach of the agreement referred to in paragraph 3(c) (d)and (e) of the defence.

(2) Damages for breach of agreement contained in the debenture dated 6th January 1975.

(3) Damages for unlawful detention of the machinery and goods.

(4) Interest on the said damages at 6% from the date of the breach till judgment.

(5) Costs."

The plaintiffs in their reply joined issue with the defendants upon their defence and in their defence to the counterclaim, the plaintiffs admitted the averments in the abovementioned paragraphs 3(a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (m) and (o) of the defendants' defence and counterclaim. As regards paragraph 3(j), the plaintiffs admitted that they refused to comply with the first defendant's request to hand over the 2 bills of lading, one invoice and one certificate of origin as the loan documents in favour of the plaintiffs were not yet executed by the first defendants. The plaintiffs averred that the execution of the loan documents was a condition agreed to by the first defendants. With regard to paragraph 3(n) the plaintiffs did not admit that the machinery and goods were ordered by the first defendants for sale to Multititle Sdn. Bhd. and averred that their refusal to release the machinery and goods was due to the first defendants delay in executing the loan documents. As regards paragraphs 3(p) and (q) the plaintiffs denied that the plaintiffs sought unilaterally to vary and impose fresh conditions for the release of the said machinery and goods as alleged. They averred that the conditions were in fact agreed to by the first defendants, who were represented by their solicitors, M/s. Lee Kok Liang & Co., before whom they executed the said debenture. The plaintiff also denied, with regard to paragraph 3(s), that it was expressed in the debenture that at the date of the execution thereof the said machinery and goods were to be in the possession of the first defendants and averred that the agreement reached was that the said machinery and goods were only to be released when the first defendants paid to the plaintiff the bank charges, freight charges, godown charges and interest incurred upon completion of the debenture. The sum of $212,000 secured under the said debenture was only sufficient to cover the Letter of Credit and therefore additional expenses incurred had to be settled. As regards paragraph 3(w) the plaintiff denied that the difference due were the first

and second repayment instalments due under the said debenture and as regards paragraph 3(x) the plaintiffs averred that the plaintiffs retained possession of the said machinery and goods as the first defendants failed to pay the difference of $58,105.66 to the plaintiffs which sum was eventually paid in September 1975 after the plaintiffs had obtained judgment against the first defendants. Finally, as regards paragraphs 3(a)(i) the plaintiffs averred that although the plaintiffs have invoked clause 8 of the debenture by appointing a receiver, the plaintiffs were at liberty to take simultaneous action to claim the sum of $266,425.54 so long as the receiver has not disposed of the said machinery and goods.

Having considered the pleadings, I was satisfied that there were in this case triable issues of both fact and of law. Thus for example a trial court will have to examine and consider the express terms and conditions of the said debenture to find out which party was to have possession of the said machinery and goods and when such party was entitled to possession, that is at the date of the signing of the debenture or at some other time. It would also have to take evidence and then decide whether in the circumstances of the case the plaintiffs were entitled to exercise their rights under clause 8 of the debenture in appointing receivers. Yet another issue which has to be tried is whether the plaintiffs had unlawfully detained the documents of title of the machinery and deprived the 1st defendant of possession of the goods after their arrival. Counsel for the defendants have argued that the plaintiffs had not pleaded their right of lien and that even if it had been pleaded as claimed by counsel for the plaintiffs such right must be established by evidence as to the facts, and the issue of law as to whether there was such a right could only be decided at a trial. With regard to this point, counsel for the plaintiffs referred to paragraphs 10 and 14 of the reply and the defence to counterclaim and to the case of *Re The Firm of T.S.N.*[3] to support his contention that the plaintiffs had a general lien on the documents of title. On this point, it was my opinion that evidence would have to be taken and the law on this point would have to be more fully argued, before a trial court can decide the issue as to whether in the circumstances of this case there was such a right of lien. It is not for the court at this stage to try on a motion or a summons, whether the statement of defence and counterclaim are true or false, and the plaintiffs can only succeed on this application if they can show that the defence and counterclaim in this case are clearly sham (see *Remmington* v. *Scoles*[4]). On the pleadings, it has not been shown to be such a case and there should therefore be no order under Order 25 rule 4 of the Rules of the Supreme Court, 1957.

The matter however did not end there as counsel for the plaintiffs had also asked the court to consider exercising its powers under Order 32 rule 6 of the Rules of the Supreme Court, 1957 and/or its inherent jurisdiction. Apart from all rules and orders the court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see *Reichel* v. *Magrath*[5]). In this connection it would be appropriate to quote the following dictum of Lord Herschell in the case of *Lawrance* v. *Norreys*[6] in the House of Lords where His Lordship said as follows: —

> "It cannot be doubted that the court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases."

In this case, counsel for the plaintiffs has not satisfied me that the pleadings and the affidavits filed show that the defence and counterclaim are obviously frivolous or vexatious or an abuse of the process of the court and I considered that the court should not therefore exercise its inherent jurisdiction to strike out the defence and counterclaim of the 1st defendants, 2nd defendant and 3rd defendant as prayed for in the said summons-in-chambers.

Finally, I declined to consider this application under Order 32 rule 6 of the Rules of the Supreme Court, 1957 because, apart from counsel for the plaintiffs' vague reference to that Order as well as Order 28 rule 12 and Order 70 of the Rules of the Supreme Court, 1957, there was no specific application filed before the court considered the said summons-in-chambers to amend the latter. There should have been a prior application for leave to amend and stating therein the exact amendment asked for. In the words of Farwell L.J. in the case of *Hyams* v. *Stuart King*[7] —

> "... it is the duty of the plaintiff's counsel, a duty which ought to be enforced by the judge, when he asks for an amendment which raises a fresh issue or a fresh cause of action, to formulate and state in writing the exact amendment that he asks, in justice to the defendant, in order that he may know exactly the new case that he has to meet, and to the judge in order that he may know exactly what he is asked to try, and to the Court of Appeal in order that they may know what has been tried and decided."

The above dictum was made by His Lordship in that case in connection with the amendment of pleadings at trial. But it is equally applicable, in my opinion, to amendment of proceedings at an interlocutory stage. Without a motion or a summons for judgment on admission (see *Chitty* Queen's Bench Forms (18th Ed.) at p. 331) in this case before it applying for an order that the plaintiffs may be at liberty to sign judgment in this action for a stated and ascertained sum of money, the court ought not to consider whether it should make an order pursuant to Order 32 rule 6 of the Rules of the Supreme Court, 1957. As there was no such motion or summons filed earlier on in this case, I therefore, as stated above, did not make any order under Order 32 rule 6 but merely decided to dismiss with costs the application in the original summons-in-chambers applying for an order to strike out the defence and counterclaim.

Application dismissed.

Solicitors: *Lim Huck Aik & Co.; Lim Ewe Hock.*